

In the matter of:

Verizon Wireless' Petition Pursuant
To 47 U.S.C. § 160 For Partial
Forbearance From The
Commercial Mobile Radio Services
Number Portability Obligation.

WT Docket No. 01-184

CC Docket No. 99-200

COMMENTS OF THE STATE COORDINATION GROUP

The State Coordination Group (SCG) is comprised of State Commissions' staffers who are regularly involved with number conservation issues. The SCG is not affiliated with any other group and only speaks for itself. The staff members generally support the positions set forth in this document. This document represents the collective efforts of staff members of the following State Commissions: Tennessee, Nebraska, California, Ohio, Texas, and Maryland. Also endorsing this document are: The Maine Public Advocate's Office and The Maryland Office of People's Counsel.

The views expressed by State staffs may not reflect the positions of their Commissions. Silence by a State Commission in its separately filed comments on any particular point set forth in this document does not connote agreement or disagreement with that point.

I. THERE IS A PATTERN EMERGING

A. *The Wireless Industry is Reneging on Its Agreement.*

Since the Federal Communications Commission (FCC or Commission) released its *First Report and Order* on number portability in 1996, the wireless industry has filed three petitions for extensions of time to meet the FCC's portability requirement. In November 1997, the Cellular Telecommunications

Industry Association (CTIA) filed a petition with the FCC's Wireless Bureau requesting a nine-month extension of the portability requirement. CTIA claimed that an extension was necessary due to the "complexity of the wireless number portability solution and the multitude of systems which need to be modified for its effective implementation".¹ The Wireless Bureau granted the extension on September 1, 1998. In December 1997, prior to the nine-month extension being granted by the Wireless Bureau, the CTIA filed a second petition, this time with the Commission itself. The petition sought forbearance from the wireless portability requirement under Section 10 of the Communications Act of 1934. This petition was filed only nineteen months before the FCC deadline for the wireless portability requirement.

In its Memorandum Opinion and Order, WT Docket No. 98-229, CC Docket No. 95-116, the FCC stated the following:

In its Forbearance Petition, CTIA argues that the implementation deadline for wireless service provider portability should be extended not only because of the technical complexity of implementing portability, but also on the grounds that near-term implementation of wireless number portability is not essential to competition and could harm existing competition by forcing wireless carriers to divert resources from other endeavors such as expanding network coverage and improving service quality. CTIA also argues that the capital requirements associated with implementing wireless number portability will impede network buildout and reduce price competition without a commensurate benefit to competition. Therefore, CTIA argues that forbearance from CMRS number portability obligations until the five-year PCS buildout period has ended is appropriate under a section 10 forbearance analysis.²

¹ Reply Comments of the CTIA dated January 26, 1998

² FCC *Memorandum Opinion and Order*, page 7 at para.12

If this sounds vaguely familiar, it should. On August 2, 2001, seventeen months from the November 2002 deadline, the FCC received yet another petition. This one, from Verizon Wireless (Verizon), requests permanent forbearance from the wireless number portability obligation, rather than a mere delay in implementation. Verizon's petition, long on rhetoric and short on fact, asks the FCC to excuse the wireless industry from the competitive woes of Local Number Portability. The reasoning is trite. Phrases similar to the following are peppered throughout Verizon's recent petition:

- ...expensive but totally unnecessary investments...³
- ...regulatory overkill...⁴
- ...complex technical burdens and expenses...⁵
- ...costly, enormously complex, and totally unnecessary burden...⁶

Then there are the usual scare tactics:

- ...slow the provisioning of new services...⁷
- ...consume scarce resources...⁸
- ...concerns over network impact and reliability...⁹

The FCC should see this filing for what it is: yet another attempt to forestall the development of competition in the telecommunications marketplace.

³ Verizon Wireless petition, Docket No. WT 01-184, page 1

⁴ Verizon Wireless petition, Docket No. WT 01-184, page 2

⁵ *ibid.*

⁶ Verizon Wireless petition, Docket No. WT 01-184, page 9

⁷ Verizon Wireless petition, Docket No. WT 01-184, page 3

⁸ *ibid.*

B. Was There Ever Any Intent to Comply with the FCC Order?

Comparing the timing and content of the petitions filed by the wireless industry since the *First Report and Order*, a pattern emerges. It appears that the wireless industry is determined to oppose the Local Number Portability (LNP) requirement soon after the *First Report and Order* was issued. They stall repeatedly, each time offering a different reason for not meeting the mandate.

In the most recent version of the argument, Verizon states that the wireless industry can and will implement full number pooling without full LNP-capability by the FCC-mandated deadline of November 24, 2002. Verizon proposes to accomplish pooling by using only the Location Routing Number (LRN)-architecture. This is a complete reversal of over two year's worth of arguments by the wireless industry, in both state and federal forums, that full LNP-capability is necessary for pooling. Given the abrupt change of position, the Commission should re-evaluate the credibility of any of the industry-sponsored evidence and commentary.

C. We Know What the Customer Wants – Just Ask Us.

Verizon states in its petition that, "Customer choice is not impeded by personal attachment to a wireless phone number"¹⁰ and points to a low "churn" level in the wireless industry as proof of its assertion. However, a more thorough analysis of the situation suggests that the industry's long-term contracts and the inability of customers to keep their phone numbers contributes to the currently low turnover rate. If this is the case, the ability to retain one's wireless phone number might significantly impact consumer choice in wireless carriers.

⁹ Verizon Wireless petition, Docket No. WT 01-184, page 8

¹⁰ Verizon Wireless petition, Docket No. WT 01-184, page 29

Now is the time to dismiss the “smoke and mirrors” of the wireless industry. The real issue is that they do not want to port individual numbers. The industry opposes portability because the provisioning of full LNP requires wireless providers to incur additional “back-office” costs and weakens the semi-captive hold the industry has on its customers. Given the opportunity to keep their current wireless numbers, customers are certainly more likely to shop for the best rates and service they can find. The Verizon petition reneges on the wireless industry’s promises to the FCC and is ultimately just another attempt to protect market share while hindering “true” competition. The Commission should reject Verizon’s petition and should hold Verizon and the rest of the industry to their commitments.

II. COMPETITION IS NOT SERVED BY FORBEARANCE

A. Verizon’s Petition Contains a Flawed Cost-Benefit Analysis.

Verizon has veiled its request for forbearance as a response to the FCC’s policies regarding efficient number utilization. “The FCC can fully achieve the number optimization goals it aims to achieve through pooling without requiring LNP, and thus without forcing carriers to make the substantial investments of personnel and capital that would be required for LNP.”¹¹ However, the Verizon request is, primarily, about competition. Verizon asserts that the cost of compliance with the LNP mandate, “will be expensive and

¹¹ Verizon Wireless petition, Docket No. WT 01-184, pages 13-14

burdensome to achieve”, and that the expense cannot be justified by the goal of increased competition because competition among carriers “is already being achieved”.¹² Thus, Verizon is claiming that a cost-benefit analysis demonstrates that the benefit of meeting the LNP mandate, i.e., increased competition, does not warrant the expense of achieving that goal.

There are two fundamental flaws in Verizon’s argument. First, Verizon has not quantified its costs for implementing full portability. Certainly, it has set forth in its pleading an accounting of the types of technical changes that must be made to its network to comply with the LNP mandate. However, Verizon offers no actual cost estimate, either total costs or projected per-customer costs. Thus, the FCC is lacking the cost component of Verizon’s cost-benefit analysis, making it impossible to evaluate Verizon’s claims.

Further, Verizon makes absolutely no attempt even to identify the “benefit” of implementing LNP, let alone to quantify it. Again, it is noteworthy that Verizon has omitted this essential analysis from its petition. Verizon is content to claim, erroneously, that the FCC’s goal of increasing competition has been achieved and that should be the end of the discussion. However that is merely the beginning of the discussion.

B. Does Having to Change Telephone Numbers Impede Wireless Competition?

When a state undertakes area code relief, whether it be overlay or split, wireline customers experience varying degrees of inconvenience and expense. The degree to which the customers are disadvantaged depends on the degree they are dependent on their telephone. Businesses, for instance, incur considerable costs to

¹² Verizon Wireless petition, Docket No. WT 01-184, page 12

reprint letterhead, business cards, reprogram computers, change advertising, etc. and they still have to get the word out to their customers. Residential customers must change address books at home and work and in computers and get the word to all their personal contacts. Many, many complaints are logged with State Commissions before and during area code relief regarding the inconveniences and costs associated with changing a phone number. Thus, there is certainly documented proof that changing one's telephone number is not an easy task.

Today, when wireless customers consider changing their service providers, they must weigh the advantages to be derived from a different calling plan against the disadvantage of having to give up their existing wireless telephone number. It seems an obvious conclusion that wireless customers would also consider the need to change telephone numbers an impediment to changing service providers. This is all the more true now, as opposed to two years ago, given the increases in both general wireless subscribership and wireless usage. The actual number of customers who would change wireless service providers if they did not have to change their telephone numbers is unknown. Verizon has included no such estimate in its petition. During an August 29, 2001 conference call between representatives of Verizon Wireless and several State Commissions' staff members, Verizon admitted it did not have hard data to offer on this issue. The omission of this information is crucial.

Without any assessment of the extent to which wireless customers value their telephone numbers and how much of an impediment this is to changing carriers, Verizon simply cannot assert that the benefit of deploying LNP does not justify the cost. The ability to change carriers without barrier or consequence is the essence of

competition. If having to relinquish one's telephone number prevents customers from changing carriers, then the wireless industry's failure to comply with the LNP mandate will only impede competition. The ability to retain one's wireless telephone number is a benefit the customer may consider critically important but Verizon has offered no assessment of this benefit to consumers. Consequently, both Verizon's cost-benefit analysis of the LNP mandate, and its characterization of the degree of competition in the wireless marketplace both are seriously flawed.

C. *What About the Wireless Industry's Interest in Competing with Wireline Carriers?*

Verizon's petition fails to discuss yet another consideration essential for the FCC's evaluation of Verizon's request for permanent forbearance. In recent years, the wireless industry increasingly has positioned itself as a source of competition for incumbent local exchange service providers' wireline services. In that vein, wireless providers have repeatedly argued that the Commission's policies should be technology-neutral, and should not favor one industry segment over another. The wireless industry has been particularly vociferous in demanding that FCC numbering policies must not discriminate against wireless carriers. The insistence on non-discriminatory policies has been evidenced in myriad ways, ranging from advocacy of a particular recovery mechanism for LNP implementation costs to outright opposition to number pooling because wireless carriers would not be LNP capable.¹³

The underlying theme for wireless positioning on various numbering issues is its insistence on being treated the same as any other industry segment. In large

¹³ In light of the instant petition, previous vehement opposition by the wireless industry to the FCC's delegation of authority to states to undertake pooling trials is especially noteworthy.

measure, the wireless industry has anticipated the possibility, if not probability, that in the eyes of most consumers, wireless service will become truly competitive with wireline service. That day is drawing nearer, as many wireless customers today eschew use of their wireline telephones to make toll calls, preferring to take advantage of wireless calling plans which afford customers thousands of “free” minutes of air time per month. In addition, as the wireless industry is the first to tout, the local calling scopes of wireless customers generally is vastly larger than that for wireline customers.¹⁴

The wireless industry has staked out its position premised on the need to be treated the same as every other industry segment, and premised on its potential to be competitive with wireline local exchange service. It should be noted that the Commission required wireline carriers in the top 100 MSAs to deploy LNP on a schedule that concluded December 31, 1998. Wireline customers have the option to change carriers but retain their assigned telephone number, as long as the customers remain physically within their local exchange. If the wireless industry is granted forbearance, wireless customers will not have the same opportunity to change carriers and keep their telephone numbers.

Granting the requested forbearance will guarantee that wireless service will not become truly competitive with wireline local exchange service because customers cannot switch between wireline and wireless service without giving up their telephone numbers. In addition, granting the requested forbearance will establish a precedent for discriminatory policies between technologies – something that the wireless providers have begged the FCC to avoid when the discrimination was not in its favor and

¹⁴ This is especially true in California, which has a uniform statewide local calling scope of only twelve

something that the FCC itself has repeatedly eschewed.

Again, it is noteworthy that the Verizon petition does not mention the industry's interest in competing with wireline local exchange carriers. Nor does it acknowledge that the policy it advocates would discriminate to the detriment of wireline carriers who already have spent millions of dollars to deploy LNP technology and to begin pooling. These are factors of tremendous importance in the FCC's consideration of the instant petition and the fact that Verizon did not even acknowledge these important factors, let alone address them, reflects a complete underestimation of the seriousness with which both federal and state regulatory authorities consider this issue. Verizon has not met its burden of demonstrating why the relief sought should be granted; its error of multiple omissions should not be rewarded.

D. Additional Data Is Needed on Customer Preferences.

The Commission should reject Verizon's petition outright, on the grounds that it has failed to demonstrate any rational basis for the relief it seeks. Should the FCC be inclined to consider the petition, the Commission should, at a minimum, obtain further data on the value wireless customers place on their telephone numbers. The Commission could do this in one of two ways. The FCC could commission an independent study, or it could direct Verizon or a wireless industry trade group to commission an independent study. If the Commission accepts Verizon's claims without gathering additional information, the decision will be based on a completely inadequate record.

III. DO NOT ASSUME THAT WIRELESS CARRIERS WILL BE READY TO PARTICIPATE IN POOLING BY NOVEMBER 2002

A. *Vendors and Other Third Parties Make for Ready Excuses.*

In its Petition, Verizon Wireless repeatedly states that if it is allowed to focus its energies on preparing for pooling, it will be ready to do so by the FCC's November 2002 deadline. What Verizon Wireless does not state is that its participation in pooling is conditioned upon the timely delivery of software by third-party vendors as well as the participation of all other wireless carriers -- and that both of these contingencies are already in serious jeopardy of not happening on time. Both federal and state regulators must become much more involved in direct oversight of the wireless pooling implementation process to ensure the roll out of wireless pooling by November 2002

In its August 23, 2001 draft, *Pooling Before Porting Task Force Report*, the CTIA states,

However, this date [a September 2002 software testing date for rollout in November 2002] is predicated on timely delivery and testing of LNP query software for virtually every wireless switch type deployed within the United States. Today it is still uncertain whether certain switch vendors will have timely availability of LNP query software for deployment and testing.... Thus, vendor delays in LNP query software availability **will** impact Pooling Establishment and jeopardize its completion by the mandated November 24, 2002 deadline. (emphasis added)

While several large carriers have told us that they are putting as much pressure on their vendors as possible, they are still uncertain as to whether the vendors will deliver on time. If the experience with the rollout of NPAC software version 3.0 is any indication of how difficult it is to completely test and rollout software, there could be significant delays

in the November 2002 deadline.¹⁵

In addition to vendor-readiness issues, recent conversations with wireless carriers confirm the fact that many of the smaller wireless carriers are confused about what they need to do and have not yet made the necessary arrangements to become LNP-capable. The wireless industry has termed this situation the “slow horse problem.” As Verizon Wireless states in its Petition, in order to support seamless wireless roaming, all wireless carriers must implement pooling/porting at the same time. To the extent that some carriers do not meet the deadline, some customers will be dropped from the network when roaming outside their home area – a result that benefits neither the consumer nor the carriers.

While we understand and appreciate the fact that many of the larger carriers are working very hard on this issue and are, through industry fora, trying to push the smaller carriers along, we do not believe that their efforts will be adequate. We strongly encourage the Commission to take a more pro-active approach with the wireless industry and to include representatives from state commissions. It is the collective experience of those states that have already implemented pooling, that the state commission has to take a very active role in the process in order to ensure carrier compliance and participation. It appears that a similar level of vigilance and participation will be needed to ensure that wireless pooling is implemented on time.

B. There Should Be Reasonable Penalties for Non-Compliance.

One way to ensure that third-party vendors and carriers alike meet their deadlines is to use substantial financial penalties as incentives. Because neither state

¹⁵States were originally told that 3.0 software would be available by October 2000. Currently, 3.0 is only available in the Northeast region and continues to experience technical difficulties. Thus, there will be at

commissions nor the FCC have jurisdiction over third-party vendors, the only way to impose penalties on them is to impose them directly on the carriers for failure to meet the deadlines. The carriers, in turn, will include the penalties in their contracts with their vendors. This will hopefully be incentive for them to deliver their product on time. Also, by having a penalty system in place, the Commission will give all carriers (large and small) the incentive to expend the necessary funds to ensure compliance – carriers will not want to pay for both the penalty and the software. In order to be effective, however, the penalties must be substantial – a relative percentage of a carrier’s revenues might provide a competitively neutral mechanism for assessing such a penalty.

We also believe that non-compliance with the FCC order should preclude the wireless industry from obtaining more scarce numbering resources. The industry has known for at least five years that they must become LNP-capable and, as of November 2002, they will have had five years to work out the “technical difficulties” they identified back in 1997. In addition, the stakes are high. According to the FCC’s own studies, wireless participation in pooling would result in the addition of over 24 million phone numbers in the available inventory. In addition, while wireless carriers are assigned 19% of the total NXX in the United States, they currently account for 50% of the new NXXs assigned by NANPA. It is essential that wireless carriers participate in pooling as soon as possible if the FCC’s implementation of number conservation measures is to have an appreciable impact of the rate of area code exhaust. Further delay will lessen the impact of conservation measures and hasten the advance of complete NANP exhaust.

least a year delay in rollout.

IV. CONCLUSION

Verizon's petition is without merit and is nothing more than another stalling tactic by the wireless industry to avoid implementing Local Number Portability. The SCG believes it is time to put the wireless industry on notice. The SCG vehemently opposes Verizon's petition for forbearance and asks the Commission to swiftly reject the petition in its entirety, thus sending a message that the Commission expects its deadline to be met.